

ESTTA Tracking number: **ESTTA377121**

Filing date: **11/05/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91196321
Party	Defendant Yogo Cafe, Inc
Correspondence Address	YOGO CAFE, INC 8 PURDY AVE RYE, NY 10580-2923 yeon.choi@gmail.com
Submission	Answer
Filer's Name	Yeon Choi
Filer's e-mail	yeon.choi@gmail.com, info@yogojoy.com
Signature	/yeon choi/
Date	11/05/2010
Attachments	USPTO_Answer.pdf (6 pages)(188283 bytes)

Applicant, Yogo Cafe, Inc., hereby answers the allegations of the Notice of Opposition filed by Burger King Corporation (hereinafter “Opposer”) against Applicant’s trademark application serial no. 77/821245 for the mark “YOGOJOY YOGO YOUR WAY” (hereinafter “Applicant’s Mark”) and specifically admits, denies and alleges as follows:

GENERAL DENIAL

Except as expressly admitted herein, the Applicant denies each and every allegation in the Notice of Opposition.

SPECIFIC RESPONSES

1. Answering paragraph 1 of the Notice of Opposition, Application admits the allegations thereof.
2. Answering paragraph 2 of the Notice of Opposition, Application lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation.
3. Answering paragraph 3 of the Notice of Opposition, Application lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation.
4. Answering paragraph 4 of the Notice of Opposition, Application lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation.
5. Answering paragraph 5 of the Notice of Opposition, Application lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation.
6. Answering paragraph 6 of the Notice of Opposition, Application lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation.
7. Answering paragraph 7 of the Notice of Opposition, Application lacks knowledge

or information sufficient to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation.

8. Answering paragraph 8 of the Notice of Opposition, Application admits the allegations thereof.
9. Answering paragraph 9 of the Notice of Opposition, Application denies each and every allegation.
10. Answering paragraph 10 of the Notice of Opposition, Application lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation.
11. Answering paragraph 11 of the Notice of Opposition, Applicant provides the same answers contained in paragraphs 1-10 above.
12. Answering paragraph 12 of the Notice of Opposition, Applicant denies each and every allegation and further alleges that there is no likelihood of confusion, mistake, or deception because the differences in appearance, sound, and meaning between the marks, differences in goods/services offered, difference in customer base, and differences in markets served.
13. Answering paragraph 13 of the Notice of Opposition, Applicant denies each and every allegation and further alleges that there is no relation to the goods/services provided and thus would not confuse, deceive or misrepresent to the public any way that Applicant's services are those of the Opposer. Applicant only sells frozen yogurt with various dry and fruit toppings in a self service setup. Applicant serves no hamburgers or any food offerings that are similar to the Opposer. Similarly, the Opposer does not serve any frozen yogurt and therefore has no overlap of goods/services provided. To date, the Opposer only sells pies and cakes for their dessert offerings. In view of the differences in goods/services and business operation of both parties, no likelihood of confusion exists between the marks.
14. Answering paragraph 14 of the Notice of Opposition, Application lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation.

15. Answering paragraph 15 of the Notice of Opposition, Applicant denies each and every allegation and further alleges that Applicant's Mark and marks of the Opposer are not confusingly similar. The only similarity, if at all, between the Applicant's Mark and the marks of the Opposer is in the portion "YOUR WAY" which, upon information and belief, has been used and registered by numerous third parties in the food, and restaurant business class of goods. As a result, the Opposer cannot base any similarity between its marks and the portion of the Applicant's Mark that contains the words "YOUR WAY".
16. Answering paragraph 16 of the Notice of Opposition, Applicant denies each and every allegation and further alleges that marks of the Opposer and the Applicant's Mark do not convey the same meaning. The Applicant's Mark simply conveys the message that customers themselves can customize their frozen yogurt in a self-service setup by dispensing their own frozen yogurt and top the frozen yogurt with any of over 40 possible toppings. The Opposer's business model is not of a self-service setup because the food is prepared by the employees before it is served. The Opposer's marks are actually confusing and not descriptive of the Opposer's business. The precise meaning of the "YOUR WAY" marks is unclear and therefore cannot cause confusion with the Applicant's mark.
17. Answering paragraph 17 of the Notice of Opposition, Applicant denies each and every allegation and further alleges that both parties market their goods/services in different channels of trade and serve different customer base. Applicant only sells frozen yogurt with various dry and fruit toppings in a self service setup. Applicant serves no hamburgers or any food offerings that are similar to the Opposer. Similarly, the Opposer does not serve any frozen yogurt and therefore has no overlap of goods/services provided. The Applicant and Opposer are in different markets. In view of the differences in goods/services and business operation of both parties, no likelihood of confusion exists between the marks.
18. Answering paragraph 18 of the Notice of Opposition, Applicant admits the allegations that the Applicant is not affiliated or connected with Burger King and has not been endorsed or sponsored by Burger King. As to the remainder of the allegations in paragraph 18, Application lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation.
19. Answering paragraph 19 of the Notice of Opposition, Applicant admits the allegations that the Applicant has never sought or obtained Burger King's permission to use the alleged mark YOGOJOY YOGO YOUR WAY. As to the

remainder of the allegations in paragraph 19, Application lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation.

20. Answering paragraph 20 of the Notice of Opposition, Application lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation.
21. Answering paragraph 21 of the Notice of Opposition, Applicant provides the same answers contained in paragraphs 1-20 above.
22. Answering paragraph 22 of the Notice of Opposition, Application lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation.
23. Answering paragraph 23 of the Notice of Opposition, Application lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation.
24. Answering paragraph 24 of the Notice of Opposition, Applicant denies each and every allegation and further alleges that there is no likelihood of dilution by blurring because both parties' marks are not similar to the consumers.
25. Answering paragraph 25 of the Notice of Opposition, Application lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation.

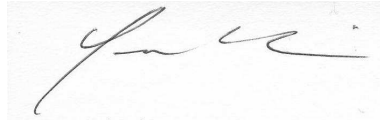
WHEREFORE, Applicant respectfully asks that the current Opposition proceeding be denied and that the Applicant's pending trademark application serial number 77/821245 on the mark "YOGOJOY YOGO YOUR WAY" be allowed for registration on the Principal Register.

DATED: November 5th, 2010

Respectfully Submitted,

Yogo Cafe Inc,

By:

A handwritten signature in black ink, appearing to read 'Yeon Choi', is written over a light gray grid background.

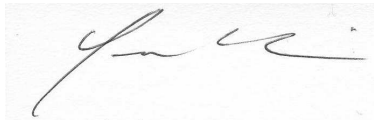
Yeon Choi
Officer of Yogo Cafe, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this date I served the foregoing APPLICANT YOGO CAFE INC.'s ANSWER TO NOTICE OF OPPOSITION upon counsel of record via U.S. mail properly addressed as follows:

Ann K. Ford
DLA PIPER, LLP (US)
500 8th Street, NW
Washington, D.C. 20004

This the 5th day of November, 2010.

A handwritten signature in black ink, appearing to read 'Yeon Choi', is written over a horizontal line.

Yeon Choi
Officer of Yogo Cafe, Inc.